

intersex detainees. All pat-down searches shall be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and agency policy, including consideration of officer safety.

§ 115.116 Accommodating detainees with disabilities and detainees who are limited English proficient.

(a) The agency shall take appropriate steps to ensure that detainees with disabilities (including, for example, detainees who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse. Such steps shall include, when necessary to ensure effective communication with detainees who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that any written materials related to sexual abuse are provided in formats or through methods that ensure effective communication with detainees with disabilities, including detainees who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans with Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse to detainees who are limited English proficient, including steps to provide in-person or telephonic interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively,

using any necessary specialized vocabulary.

(c) In matters relating to allegations of sexual abuse, the agency shall provide in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation, by someone other than another detainee, unless the detainee expresses a preference for another detainee to provide interpretation, and the agency determines that such interpretation is appropriate and consistent with DHS policy. The provision of interpreter services by minors, alleged abusers, detainees who witnessed the alleged abuse, and detainees who have a significant relationship with the alleged abuser is not appropriate in matters relating to allegations of sexual abuse is not appropriate in matters relating to allegations of sexual abuse.

§ 115.117 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who may have contact with detainees, and shall not enlist the services of any contractor or volunteer who may have contact with detainees, who has engaged in sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997); who has been convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or who has been civilly or administratively adjudicated to have engaged in such activity.

(b) When the agency is considering hiring or promoting staff, it shall ask all applicants who may have contact with detainees directly about previous misconduct described in paragraph (a) of this section, in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(c) Before hiring new employees who may have contact with detainees, the

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agency shall require a background investigation to determine whether the candidate for hire is suitable for employment with the agency. The agency shall conduct an updated background investigation for agency employees every five years.

(d) The agency shall also perform a background investigation before enlisting the services of any contractor who may have contact with detainees.

(e) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination or withdrawal of an offer of employment, as appropriate.

(f) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

(g) In the event the agency contracts with a facility for the confinement of detainees, the requirements of this section otherwise applicable to the agency also apply to the facility.

§ 115.118 Upgrades to facilities and technologies.

(a) When designing or acquiring any new holding facility and in planning any substantial expansion or modification of existing holding facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect detainees from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a holding facility, the agency shall consider how such technology may enhance the agency's ability to protect detainees from sexual abuse.

RESPONSIVE PLANNING

§ 115.121 Evidence protocols and forensic medical examinations.

(a) To the extent that the agency is responsible for investigating allegations of sexual abuse in its holding facilities, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative

proceedings and criminal prosecutions. The protocol shall be developed in coordination with DHS and shall be developmentally appropriate for juveniles, where applicable.

(b) In developing the protocol referred to in paragraph (a) of this section, the agency shall consider how best to utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention and counseling to most appropriately address victims' needs.

(c) Where evidentiarily or medically appropriate, at no cost to the detainee, and only with the detainee's consent, the agency shall arrange for or refer the alleged victim detainee to a medical facility to undergo a forensic medical examination, including a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified health care personnel.

(d) If, in connection with an allegation of sexual abuse, the detainee is transported for a forensic examination to an outside hospital that offers victim advocacy services, the detainee shall be permitted to use such services to the extent available, consistent with security needs.

(e) To the extent that the agency is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (d) of this section.

§ 115.122 Policies to ensure investigation of allegations and appropriate agency oversight.

(a) The agency shall establish a protocol to ensure that each allegation of sexual abuse is investigated by the agency, or referred to an appropriate investigative authority.

(b) The agency protocol shall be developed in coordination with DHS investigative entities; shall include a description of the responsibilities of both the agency and the investigative entities; and shall require the documentation and maintenance, for at least five